

A RESOLUTION recognizing and supporting the use of a formal process for developing and evaluating the feasibility of achieving flow targets to address instream flow and freshwater inflow requirements for aquatic ecosystems in the Delaware River Basin, and recognizing a Subcommittee on Ecological Flows to assist in the development of scientifically-based ecological flow requirements for the maintenance of self-sustaining aquatic ecosystems.

WHEREAS, the parties to the 1954 Supreme Court Decree (“Decree Parties”), the Commission, the Flow Management Technical Advisory Committee (“FMTAC”), the Water Management Advisory Committee (“WMAC”) and key stakeholders all concur that a process is needed to thoroughly evaluate alternative water management policies that consider ecological requirements in addition to human needs; and

WHEREAS, Docket No. D-77-20 CP (Revision 6) (Amended), extending through April 30, 2004 the experimental augmented conservation release program for the New York City Delaware Basin reservoirs, commits the Decree Parties to continue discussions toward the development of a long-term, flexible program to manage releases from the New York City Delaware River Basin reservoirs, with the aid of approaches under consideration by the FMTAC and in the updated Comprehensive Plan that currently is a work in progress; and

WHEREAS, the draft Flow Management Strategy Study developed by HydroLogics, Inc. identifies the need to adopt a process for resolving water management disputes in the basin, while developing new data and science to facilitate decision-making; and

WHEREAS, during the Commission’s May 8, 2003 conference session, a representative of The Nature Conservancy presented to the commissioners a set of draft goals and a process for developing optimal flow management regimes to serve ecological as well as human needs; and

WHEREAS, the Instream Flow Subcommittee (“IFS”) of the WMAC and an independent Committee on the Ecological Function of the Upper River (“CEFUR”), separately, have been considering issues related to the identification and determination of ecological flow requirements; and

WHEREAS, it is the Commission’s desire to increase efficiency by recognizing a single committee, which could act on behalf of and give equal consideration to the needs of both the FMTAC and the WMAC, to aid in the identification and determination of ecological flow requirements; and

WHEREAS, conditions and knowledge in the Delaware River Basin have evolved over the past two decades, creating the need for a reevaluation of water management objectives and implementation strategies. The current situation is thus similar to that which triggered the Good Faith discussions that resulted in the *Interstate Water Management Recommendations of the Decree Parties to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20*, issued in 1982; now therefore,

BE IT RESOLVED by the undersigned Commissioners and Decree Parties:

1.
  - a. The Commission and the Decree Parties commit to participating in a non-binding, collaborative process to develop experimental flow management options for the Delaware River and its regulated tributaries. Because the process is non-binding, it does not alter or implicate Section 3.3(a) of the *Delaware River Basin Compact*, providing that unanimous approval of the Decree Parties is required for any change to the provisions of the 1954 Supreme Court Decree (“Decree”). However, actions under Section 3.3(a) of the Compact may be required to implement recommendations that emerge from the process.
  - b. The objectives of the Commission and the Decree Parties for this process shall include but shall not be limited to:
    - 1) the development of scientifically-based ecological flow requirements for the maintenance of self-sustaining aquatic ecosystems, including consideration of water quality impacts and the full range of low to high flows;
    - 2) objective recreational needs assessments;
    - 3) a scientific review of the salinity objective based on existing conditions and research (as required by the Good Faith Agreement); and
    - 4) rigorous assessment of existing and future water needs for municipal, industrial and other uses.
  - c. Management alternatives developed through the process shall consider the full range of water resource needs and examine a range of structural and non-structural solutions, both within and outside of the constraints of the Decree. Daily flow modeling will be central to the development and evaluation of water management alternatives.
2. A subcommittee of the FMTAC, known as the Subcommittee on Ecological Flows (“SEF”) is hereby recognized, and its role shall be to assist in achieving the objective described in paragraph 1.b.1.
3. The FMTAC, giving equal consideration to its needs and the needs of the WMAC, shall provide direction to the SEF. The SEF shall act as a subcommittee of the FMTAC and shall report directly to the FMTAC, including regular reports of progress on SEF activities at FMTAC meetings. As appropriate, the SEF shall also provide regular progress reports to the WMAC on its activities conducted on behalf of the WMAC.
4. The FMTAC and the WMAC shall generally work with the SEF in a collaborative way.
5. In pursuing the objectives outlined herein, the FMTAC shall consult, as appropriate, with the WMAC, the Water Quality Advisory Committee, the Toxics Advisory Committee, and other DRBC advisory committees.

6. The membership of the SEF shall include at least one member of the FMTAC who is a Decree Party member, and at least one member of the WMAC who is not a Decree Party member.
7. The Commission shall participate in and support the SEF by sending a staff representative or representatives to SEF meetings and providing meeting space as available.
8. The SEF shall, with the advice and consent of the FMTAC, in accordance with the membership requirements of paragraph 6, and with consideration for the current membership of the CEFUR and the IFS, decide its membership, including such changes in its membership from time to time as may be appropriate and necessary for the accomplishment of its activities, and shall establish its own procedures for selecting officers, scheduling meetings, preparing and circulating agendas, minutes and other documents, and conducting committee activities.
9. The SEF is charged with development of: a statement of its mission and goals; its work plan and schedule; project management plans; cost estimates; potential funding mechanisms; a bibliography of projects that have been completed and are applicable to its mission and goals; lists of potential peer reviewers for draft reports; and all other products that in its view or the view of the FMTAC are required for the fulfillment of its mission.
10. The SEF is further charged with the identification and determination of the relationships between flow characteristics and aquatic ecosystem function in the regulated Upper Delaware River (West Branch Delaware River below Cannonsville Reservoir, East Branch Delaware River below Pepacton Reservoir, Neversink River below Neversink Reservoir, and upper main stem Delaware River to Montague) and in other regulated or unregulated portions of the Delaware River Basin, including the drainage area of the main stem downstream of Montague and the Delaware Estuary (collectively, the "Lower Basin"). The methodologies and processes employed by SEF shall be capable of providing assessments of levels of aquatic ecosystem function in relation to varying levels of instream flow.
11. The methodologies and processes employed or developed for the regulated Upper Delaware River may enlighten the development of methodologies and processes to define similar flow requirements in other regulated or unregulated portions of the Delaware River Basin. To help assure continuing, non-exclusionary funding, work in the Lower Basin shall be initiated and conducted concurrently with work in the Upper Delaware River. Applicable environmental studies (e.g., studies on ecology, salt-water intrusion, and fisheries) currently under way in the Delaware River Basin should be incorporated in the work plan that is developed by the SEF pursuant to paragraph 89 of this Resolution.

12. Review of any flow management proposal(s) for the regulated Upper Delaware River based on the work of the SEF shall include a concurrent assessment of the impacts of such flow management proposal(s) on Lower Basin interests.
13. This Resolution shall take effect immediately.

/s/ Ernest P. Hahn

Ernest P. Hahn, Chairman pro tem

/s/ Pamela M. Bush

Pamela M. Bush, Esq., Commission Secretary

ADOPTED: September 3, 2003

Consent to Action by

Delaware River Basin Commission

Consent of the parties to the U.S. Supreme Court Decree in New Jersey v. New York, 347 U.S. 995 (1954) to the action of the Delaware River Basin Commission recognizing and supporting the use of a formal process for developing and evaluating the feasibility of achieving flow targets to address instream flow and freshwater inflow requirements for aquatic ecosystems in the Delaware River Basin, and recognizing a Subcommittee on Ecological Flows to assist in the development of scientifically-based ecological flow requirements for the maintenance of self-sustaining aquatic ecosystems.

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State of New York

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